



CITY COUNCIL STAFF REPORT

MEETING DATE: November 17, 2004

APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE C APPLICATION MC-04-10: E DUNNE - KRUSE

RECOMMENDED ACTION(S):

1. Open/close the Public Hearing
2. Council discretion.

EXECUTIVE SUMMARY:

Section 18.78.100(A) of the Municipal Code requires city staff review of Measure C applications to determine whether or not the proposed projects would conform to the City's General Plan. Projects which do not conform to the General Plan may not be accepted for processing under the City's Residential Development Control System (RDCS). The subject application was found to be inconsistent with the General Plan and Zoning.

The proposed project is a seven lot single family residential development on a 39.81 acre parcel located north of the East Dunne Avenue and Thomas Grade intersection in the O-S, Open Space district. Residential uses are allowed in the Open Space District on a minimum five acre parcel and on slope that are less than 20 percent. The Measure C application shows seven parcels, five (5) of which are over five (5) acres in size, and two (2) are under 1.4 acres in size. To conform to the current General Plan and zoning limits, all lots would need to be a minimum of five (acres) in size. Given the above determination, the application was not accepted for processing.

The subject property is also outside of the Urban Service Area. Section 18.78.080 of the Municipal Code prohibits the extension of urban services for residences beyond its urban service area except where a prior agreement exists to provide such services, or the denial of such services would have a direct adverse impact on the public health and safety.

As stated in the attached appeal letter received October 21, 2004, the applicant has appealed the Planning Officer's ruling on two grounds. The first is that Action 1.6 under the City's Open Space Element requires the City to allow "planned cluster developments" thus enabling the two smaller lots to be created. Because the City does not currently have any zoning provision that allows for such development, the applicant contends that the zoning code is inconsistent with the General Plan and the application must be allowed.

The applicant also maintains that, even though the property is outside the urban service area, a 1991 Settlement Agreement (attached) exempts the parcels at issue from LAFCO approval of provision of water and service. That contention is probably supportable, but only for the four (4) lots addressed in the Settlement Agreement. The current application is for seven (7) lots.

With respect to the contention that the City's zoning code is inconsistent with the General Plan because it does not address "planned cluster developments," the text of Action 1.6 does not require implementation of "Planned Cluster Zoning," Action 1.6 provides that:

**Agenda Item # 19
Supplemental Staff
Report**

(Distributed 11/17/04)

Prepared By:

Planning Manager

Submitted By:

City Manager

“Use a variety of open space preservation tools to protect open space in the city, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional land upon development.”

Applicant’s argument is that the paragraph should be interpreted that the City must use every single tool listed for protection of open space. This is not the language of the Action. Instead, it states that the City should use a “variety” of tools. Use of the term “variety” contemplates that the City should have the latitude to determine which tools, if any, are appropriate. Many of the “tools” listed are not embodied in the City’s zoning code, but are the subject of current or future study, or are imposed on a case-by-case basis.

Even if the General Plan was interpreted to require that the City have planned cluster development, the General Plan does not require that planned cluster development, or any particular “tool,” be used on a particular parcel. The City has the power, under the California Constitution and Zoning and Planning Law, to apply its General Plan to use a particular area of its jurisdiction. For example, a planned cluster development may be an appropriate tool to transfer development from the hillsides to the base of the hill. However, in this case, the transfer would be from one portion of the hillside to another. The City could therefore conclude that the subject property is not an appropriate area for cluster development because it does not transfer development for the hillside slopes as intended.

With respect to the extension of services beyond the urban service area, LAFCO approval is not required because the attached Settlement Agreement was executed in 1991, prior to the enactment of Government Code section 56133 in 1994, which requires LAFCO approval of out-of-area service connections. However, as noted previously, the prior Settlement Agreement only applies to four (4) lots, not the seven (7) lots proposed in the Measure C application. Therefore, the restriction on extension of services beyond the urban service area would still apply to the three lots not covered by the prior agreement.

In considering the appeal, the City Council may do one of the following: 1) affirm the decision of the Community Development Department to reject the application on the basis of the nonconformity with the plans (General Plan and Zoning Code), 2) reverse the decision by finding that the proposed development is in conformity with the plans, or 3) permit the applicant to modify his proposed development to bring it into conformity with the plans. If the plans were modified to reduce the number of dwelling units to four (4), consistent with the prior Settlement Agreement, the application could be accepted for processing. All lots would also need to be a minimum of five acres in size.

Adoption of the attached resolution “A” is recommended should the City Council wish to grant the appeal and allow the Measure C application to be processed as modified above. Should the Council wish to deny the appeal, adoption of resolution “B” is recommended.

FISCAL IMPACT: No budget adjustment required.

RESOLUTION NO. "A"

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING APPEAL APPLICATION AP-04-07 AND ACCEPTING A MODIFIED MEASURE C APPLICATION FOR A FOUR LOT SUBDIVISION ON A 39.81 ACRE PARCEL LOCATED NORTH OF THE EAST DUNNE AVENUE AND THOMAS GRADE INTERSECTION. APPLICATION MC-04-10: EAST DUNNE - KRUSE. (APN 728-01-002)

WHEREAS, The City Council has authorized a Residential Development Control System (Measure C) competition to be held during Fiscal Year 2004-2005 for award of residential building allocations to be built during Fiscal Year 2006-07 and Fiscal Year 2007-08; and

WHEREAS, Sections 18.78.100A and 18.78.190A of the Morgan Hill Municipal Code require the Planning Manager (Planning Officer) or designated staff to review each application submitted for a Measure C competition and determine whether or not the proposed development conforms to the City's General Plan and site development standards as set forth in Chapter 17.34 and Title 18 of the Morgan Hill Municipal Code. Proposed developments that do not conform to the city codes as cited above shall be rejected unless the City Council permits the applicant to modify his proposed development to bring it into conformity with the plans; and

WHEREAS, The Planning Officer has determined that the project as proposed would require extension of services to residences beyond the urban service area and would create lots that are less than the 5 acre minimum required by the Open Space Land Use designation and the application therefore cannot be accepted for processing; and

WHEREAS, said action was appealed to the City Council as provided in Sections 18.78.100B and 18.78.190B of the Morgan Hill Municipal Code; and

WHEREAS, such appeal request was considered by the City Council at their meeting of November 17, 2004, at which time the City Council granted the appeal thereby allowing the applicant to modify his proposed development to bring it into conformity with the General Plan; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

RESOLUTION NO. "A"

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**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE
AS FOLLOWS:**

- SECTION 1.** The appellant is directed to modify the proposed development plan to reduce the number of residential lots from seven (7) to four (4), consistent with the prior Settlement Agreement. The lot size minimum shall be increased to five (5) acres to be consistent with the General Plan and Zoning.
- SECTION 2.** The proposed development as modified above is consistent with the Zoning Ordinance and the General Plan.
- SECTION 3.** The proposed development as modified above is hereby accepted for processing under the current fiscal year Residential Development Control System (Measure C) competition.

**PASSED AND ADOPTED THIS 17th DAY OF NOVEMBER 2004, AT A REGULAR
MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:**

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

DENNIS KENNEDY, Mayor

RESOLUTION NO. "B"

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING THE APPEAL APPLICATION AP 04-07: EAST DUNNE – KRUSE AND FINDING APPLICATION MP 04-10 TO BE INCONSISTENT WITH THE GENERAL PLAN AND THEREFORE NOT ACCEPTED FOR PROCESSING UNDER THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM COMPETITION FOR THE FISCAL YEAR 2006-07 BUILDING ALLOTMENT.

WHEREAS, The City Council has authorized a Residential Development Control System (Measure C) competition to be held during Fiscal Year 2004-2005 for award of residential building allocations to be built during Fiscal Year 2006-2007 and Fiscal Year 2007-08 ; and

WHEREAS, Sections 18.78.100A and 18.78.190A of the Morgan Hill Municipal Code require the Community Development Director (Planning Officer) or designated staff to review each application submitted for a Measure C competition and determine whether or not the proposed development conforms to the City's General Plan and site development standards as set forth in Chapter 17.34 and Title 18 of the Morgan Hill Municipal Code. Proposed developments that do not conform to the city codes as cited above shall be rejected unless the City Council permits the applicant to modify his proposed development to bring it into conformity with the plans; and

WHEREAS, The Planning Officer has determined that the project as proposed would require extension of services to residences beyond the urban service area and would create lots that are less than the 5 acre minimum required by the Open Space Land Use designation and the application therefore cannot be accepted for processing; and

WHEREAS, said action was appealed to the City Council as provided in Sections 18.78.100B and 18.78.190B of the Morgan Hill Municipal Code; and

WHEREAS, such appeal request was considered by the City Council at their meeting of November 17, 2004, at which time the City Council upheld the decision to reject the application from the Residential Development Review Competition for Fiscal Year 2006-2007.

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

RESOLUTION NO. "B"

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NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The Measure C application as proposed, shows seven parcels, five (5) of which are over five (5) acres in size, and two (2) are under 1.4 acres in size. To conform to the current General Plan and zoning limits, all lots would need to be a minimum of five (acres) in size.

SECTION 2. The subject property is also outside of the Urban Service Area. Section 18.78.080 of the Municipal Code prohibits the extension of urban services for residences beyond the City's urban service area except where a prior agreement exists to provide such services, or the denial of such services would have a direct adverse impact on the public health and safety. The City Council finds that a prior "Settlement Agreement" would allow extension of services to four lots, but not the seven (7) lots proposed in the Measure C application. Therefore, the restriction on extension of services beyond the urban service area would still apply to the three lots not covered by the prior agreement.

SECTION 3. The proposed development is inconsistent with the Zoning Ordinance and the General Plan.

SECTION 4. The proposed application as submitted is hereby rejected from the current fiscal year Residential Development Control System (Measure C) competition.

PASSED AND ADOPTED THIS 17th DAY OF NOVEMBER 2004, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

DENNIS KENNEDY, Mayor